

# **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE**

Tuesday 12 April 2005

Session 2

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## LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

12<sup>th</sup> Meeting 2005, Session 2

### CONVENER

\*Bristow Muldoon (Livingston) (Lab)

### DEPUTY CONVENER

\*Bruce Crawford (Mid Scotland and Fife) (SNP)

### COMMITTEE MEMBERS

\*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

\*Dr Sylvia Jackson (Stirling) (Lab)

\*Paul Martin (Glasgow Springburn) (Lab)

\*Michael McMahon (Hamilton North and Bellshill) (Lab)

David Mundell (South of Scotland) (Con)

\*Tommy Sheridan (Glasgow) (SSP)

\*Margaret Smith (Edinburgh West) (LD)

### COMMITTEE SUBSTITUTES

Bill Butler (Glasgow Anniesland) (Lab)

\*Mr David Davidson (North East Scotland) (Con)

Colin Fox (Lothians) (SSP)

Mr Bruce McFee (West of Scotland) (SNP)

John Farquhar Munro (Ross, Skye and Inverness West) (LD)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Ian McAlpine (Coal Industry Social Welfare Organisation)

David Poley (Portman Group)

Keith Robson (National Union of Students Scotland)

Kevin Swoffer (Scottish Retail Consortium)

Melanie Ward (National Union of Students Scotland)

Paul Waterson (Scottish Licensed Trade Association)

Colin Wilkinson (Scottish Licensed Trade Association)

### CLERK TO THE COMMITTEE

Eugene Windsor

### SENIOR ASSISTANT CLERK

Alastair Macfie

### ASSISTANT CLERK

Euan Donald

### LOCATION

Committee Room 1



## Scottish Parliament

### Local Government and Transport Committee

*Tuesday 12 April 2005*

[THE CONVENER *opened the meeting at 14:08*]

### Licensing (Scotland) Bill: Stage 1

**The Convener (Bristow Muldoon):** I open this meeting of the Local Government and Transport Committee. The main item on the agenda is our further consideration of the Licensing (Scotland) Bill, on which three groups of witnesses will give evidence.

Before I welcome the first group of witnesses, I should inform members, the public in attendance and anyone who is watching the proceedings on the web that, for its consideration of the bill, the committee has established a web forum that can be accessed through the Scottish Parliament's website. Committee members should advise community groups of that forum and I encourage interested members of the public who wish to express their views on the bill to access the site and contribute to the debate. I also encourage committee members to study the submissions that are made on the site as part of their consideration of the bill.

I welcome to the meeting Paul Waterson, who is the chief executive of the Scottish Licensed Trade Association, and Colin Wilkinson, who is the association's secretary. I invite you to make some introductory remarks about the bill's content and the SLTA's views, after which we will move on to questions and answers.

**Paul Waterson (Scottish Licensed Trade Association):** I thank the committee for giving us the opportunity to attend the meeting and to represent the SLTA's views. Our members believe that it is a privilege to hold a liquor licence and that such a privilege is accompanied by a responsibility not only to the trade and our customers, but to Scottish society in general. When we sell alcohol, we have to maintain a difficult balance between responsibility, moral obligation and ambition, which we must harness together as we pursue our profits.

The profit motive must be underpinned by the realisation that alcohol is a dangerous product when abused. We serve alcohol to hundreds of thousands of people every day and we and our staff can do much to promote sensible drinking. Indeed, our association believes that it is our duty to do so.

Judging by the current situation, we seem to have a big job on our hands. A whole raft of statistics shows that alcohol abuse is on the increase and that binge drinking, fuelled by unacceptable promotional techniques, is here with a vengeance. Binge drinking is caused by a market that has become increasingly over-provided and by the indiscriminate granting of licences to untrained and unsuitable people.

The new legislation should be judged on how it attacks such problems. It should also be consistent, fair and efficient enough to allow the majority of the population to enjoy the social benefits of alcohol while protecting those who abuse it. It must be flexible enough to allow responsible licensees to continue to improve services and standards while ridding the trade of those who actively promote alcohol abuse. Finally, it must balance the needs of business with the need for controls.

Although the problems associated with alcohol abuse are varied and complex, no one should underestimate the important role that licensing law—and, indeed, licensees—can play in helping us to solve the problem.

**Paul Martin (Glasgow Springburn) (Lab):** Schedule 3 to the bill covers irresponsible drinks promotions. Are you satisfied with the content of that schedule? Are there any loopholes in those provisions?

**Paul Waterson:** It is difficult to come up with a definition of "irresponsible drinks promotions". We have been on about such promotions for the past 20 years, so the matter is not new to us.

The proposals in schedule 3 are almost right. The list of banned promotions is fairly comprehensive and will be relatively easy to work with. However, the 48-hour rule set out in paragraph 6 is not perfect. I believe that allowing drinks promotions to last for 48 hours instead of for one hour might create a loophole, which we will have to examine. However, concentrating on all promotions that infringe licensing objectives—which, after all, are the benchmark that everything else should be judged against—should close off many loopholes. Because of the competitive nature of the business, people will be sitting down just now to work out ways around the provisions. As a result, we need to examine the schedule.

**Paul Martin:** Are current irresponsible drinks promotions profitable? If that means of income is withdrawn, will other elements be introduced to make up that profit?

**Paul Waterson:** Whole empires have been founded on the concept of getting as many people in as possible, getting them drunk as quickly as possible, getting them out and then getting new people in to get drunk as quickly as possible.

There is no doubt about that and it is a totally irresponsible way of operating. Indeed, it is a supermarket style of selling alcohol, which is a unique product and should not be sold in the same way as bread or eggs. That is why it is licensed in the first place.

**The Convener:** In your submission, you say that, although you are comfortable with the provisions on irresponsible drinks promotions in the on-trade, you are concerned that they largely exempt the off-trade sector. What measures do you suggest should be introduced to ensure that all licensed premises are treated equally?

14:15

**Paul Waterson:** It is not right that one section of the trade is outwith the jurisdiction of the bill. The situation should be the same for everyone. Only one thing binds together the trade, from massive supermarkets to small corner shops and pubs: the licence. Every part of the trade should be under the same jurisdiction as the on-trade. The on-trade has shouted about the need to do something in law to stop promotions, but it seems that we have been targeted.

No one could say that there are no problems in the off-trade. Given that such problems exist, it is amazing that off-sales seem to be outwith the scope of the package of measures. That is not all. Off-sales will now be given the opportunity to open for 24 hours. They have already been allowed to sell alcohol in any part of the store. Before the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 was passed, they had to sell alcohol from an enclosed space, with its own till. The alcohol also had to be sold by a person over 18. Now a person under 18 can sell it and it can be sold in all parts of the store. Alcohol is being sold like any other product. It is important that we send out a signal that alcohol is unique and that off-sales should be included in the irresponsible promotions package. We do not want to force people out of pubs to abuse alcohol in the home and on the streets.

**The Convener:** Can you suggest any specific new initiatives? For example, a major supermarket could comfortably hold down a price for 48 hours. One big issue is the fact that the cost of alcohol in the off-sales trade is considerably lower than it is in on-sales, because off-sales do not have the same overheads on premises and so on and often sell a range of other goods. Are there any specific new initiatives that the committee should suggest to the Executive?

**Paul Waterson:** We could consider a package of promotional activity that should not be allowed in off-sales. We could start with anything that impinges on the licensing objectives and work our way back from that. The aim is not to protect any

part of the trade, but to stop people abusing alcohol. Often the products that supermarkets and off-sales sell are entirely different from those that are normally sold by the on-trade. I refer to 2-litre bottles of cider, tonic wines and some of the stronger drinks. We could come up with a package that was tailored to fit the off-trade. In principle, off-sales must be included in the irresponsible promotions package. It would be ridiculous for one section of the trade to be outwith that.

**Tommy Sheridan (Glasgow) (SSP):** I found much of your written evidence persuasive, but I would not mind investigating further some parts of it, especially those relating to the licensing boards. You indicate that you are concerned that the bill as drafted gives more power to licensing boards and that you are worried about the politicisation of the process. I am worried that, in big cities such as Glasgow, licensing boards are not sufficiently community responsive, because there is one big board for a population of 600,000.

If we stick with the recommendation that boards should have a maximum of 10 and a minimum of five members, with a quorum of three—to which you have referred—how would the Scottish Licensed Trade Association respond to the larger conurbations dividing their boards? For example, in Glasgow there might be five or six boards, based in different parts of the city—the south, the south-west, the north, the east and so on—rather than one. The current licensing board councillors seem to oppose that suggestion. I am seeking more community involvement in the process. What is the association's view?

**Paul Waterson:** There are 50-odd licensing boards in Scotland. We want the bill to be consistent and fair, but the 50-odd licensing boards have different interpretations of the current legislation. There are all sorts of differences and we cannot tell our members in any one part of the country what the policy is, because it changes all the time. If the Glasgow licensing board was split into different sub-boards, a pub on one side of a street could be allowed to open when a pub on the other side of the street was closed. It would breed inconsistency.

There are four key elements that can really make a difference. One concerns the number of outlets in Scotland. Boards will have to form their own opinions on over-provision. At the moment, the Glasgow licensing board is saying that it does not believe that it can ever use over-provision as a ground for not granting a licence and the Edinburgh licensing board is saying that there are over-provided parts of the city. We are stuck in the middle when not even the two biggest cities in Scotland can agree on over-provision.

Licensing boards will also have total jurisdiction over, and form their own policy on, opening hours,

so there will be no consistency in the country on those. Some licensing boards in the north of Scotland might decide that they want pubs to close on a Sunday but, in other places, the boards might decide to have pubs open everywhere until 4 am. We also have to interpret the provisions on drinks promotions and on who is responsible to operate premises. If licensing boards were broken down into further sub-boards, that would be a recipe for chaos, because everybody would have their own opinions on these matters.

**Tommy Sheridan:** It seems to me that the problem is not the number of licensing boards, but the number of interpretations of policy. If there were 200 licensing boards that all applied the same policy, we would not have the problem that you are talking about.

**Paul Waterson:** That is why we would like the system to have much stronger legislation at the centre with a bit of local flexibility. At the moment, it seems that all the flexibility is being given to the boards, which will decide on the key elements that I have just mentioned. If, at the centre of the system, strong legislation set out the permitted hours and gave licensing boards the flexibility to grant an extra hour here or there, perhaps we could have more boards. However, as the bill is worded, it would be chaos to do that.

**Tommy Sheridan:** One of the main policy objectives of the bill is

“providing a voice for communities”.

You said that, if there were a system of smaller boards in Glasgow, one side of the street could be subject to a different interpretation of licensing policy from the interpretation applied on the other side of the street. The problem is that, if that is what a local area wants, that is what devolving power can mean. As you know, there would probably be a more liberal attitude to outlets in the west of Glasgow than there would be in some of the housing schemes in the city, particularly to off-sales, which can become the focus of many problems in communities. Do you not accept that, if we are giving a voice to communities, we must devolve decision making to as low a level as possible?

**Paul Waterson:** To do that, we must have strong legislation at the centre, because we need consistency. If we had that, we could perhaps consider having more licensing boards but, under the bill as it is worded, it would be chaotic to have even more boards. Indeed, the situation is chaotic at the moment, because licensing boards often change their policies from one meeting to another. If we totally trusted boards, the proposals might work. However, although there are good boards, some boards are not as good as others. That puts us in a difficult position if we are looking for a

consistent, fair package for the businesses that are involved in the trade.

**Dr Sylvia Jackson (Stirling) (Lab):** Yesterday, we heard from local communities that they want more of a say in the granting of licences—that was the main issue. I take your point that, if we had stronger principles at the centre, we would not get the variation that we might get if we devolved more power to local communities. However, is there another way in which the licensed trade can become more involved with communities? What sort of relationships do you have with communities that allow you to discuss with them matters such as the opening of a new establishment or a change in trading hours? I am thinking about relationships that involve members of your trade rather than those that involve your central organisation. How closely does your trade work with community councils and similar bodies to ensure greater community involvement?

**Paul Waterson:** We sit on some local licensing forums up and down the country. The idea of local licensing forums will help to ensure greater community involvement. We are pleased at the way in which the forums are being formed and we hope to be involved in them. They represent a step forward.

The bill recognises that going before a licensing board is a difficult experience for an objector and it tries to make the process a bit more user friendly. It appears that under the objection regime anyone can object to a licence application, regardless of where they live, as long as their objection is not frivolous or vexatious. We think that only someone from the relevant licensing board area should be able to object. That would make the system a lot easier. I do not think that the idea that anyone can object will work.

**Dr Jackson:** Let us say that I live on a housing scheme and there is the prospect of a corner shop that will have an off-sales opening. How do you imagine that the local licensing forum will work in such a way that I will be able to have an input?

**Paul Waterson:** That is a good point. The licensing forum will advise the licensing board—that will be the policy—but the board will not have to follow that advice, although it will have to give reasons for not doing so. That seems to be a fairly anaemic way of going about things. If the forums do not have some power, they will just be talking shops. We must consider how licensing boards relate to the forums and take advice from them. I have already heard members of licensing boards say that, although the licensing forum will give them advice, they do not have to listen to it; they will just do their own thing anyway. That is no way to go forward.

**The Convener:** You raised the issue of people from anywhere being able to object to a licence application. I understand your concern about the ability of someone who lives quite far away from the relevant licensing board area to object. Is it correct that you would be relatively comfortable if someone who resided close to a premises that was right on the edge of a local authority area, but who lived just outside that area, could comment on a licence application for that premises?

**Paul Waterson:** Unfortunately, we must draw a line somewhere. We would say that that line should correspond with the licensing board's area of jurisdiction. That said, there is nothing to prevent someone from sending a letter to a licensing board to tell them that there is a problem with a premises. There would be nothing wrong with that, but with formal objections we must draw the line somewhere. The police should be able to object, too. We are firmly in favour of their being brought into the system.

**The Convener:** Would it be possible to couch the provision in such a way that someone who wished to object to a licence application must live in the relevant licensing board area or within a designated distance of the premises in question?

**Paul Waterson:** It might be possible to do that.

**Michael McMahon (Hamilton North and Bellshill) (Lab):** My question relates to licence types and it is about over-complication and discrepancies. At the moment, there are seven licence types, but it is proposed that there should be only two. Do you think that that is right? Is there a problem with having seven licence types and, if so, do you think that the solution is to reduce the number of types to two? Does the answer lie somewhere in between?

14:30

**Paul Waterson:** That is a key issue. There are too many licence types. If we are to have one licence, as appears will be the case, it should at least have three differentiated parts. We are in favour of having three licence types: on-sales licences, off-sales licences and entertainment licences. There are a number of reasons for that. We think that it would help with the bureaucratic problems and the operating plans. People would know for definite what kind of premises we were talking about.

The disciplines represented by the three types of licence should be kept. If they are not, everyone will compete, which will exacerbate the over-provision problem that we have at the moment. We will get nightclubs operating as pubs, pubs operating as nightclubs and off-sales that are prepared to open 24 hours a day. There will be 17,500 operating plans and 50-odd licensing

boards—it goes on and on. That could all be relatively easily stopped if we kept three different types of licence for three entirely different disciplines. Running a nightclub is entirely different from running a pub or an off-sales.

Then we bring hotels into the mix. For instance, will hotels be able to serve residents all night? In one licensing board they might, but in another they might not. What will the hours be? We do not know. We suggest three different licences—or one licence with three differentiated parts—so that the licence holders each know exactly what they can and cannot do. We think that that would prevent all the confusion. The issue is a key problem that we have with the bill.

**Michael McMahon:** You think that differentiating between permitted hours, and between nightclubs and pubs, is an area worthy of consideration on its own. I agree. My experience is of nightclub owners objecting to local pubs having licences beyond a certain time because that eats into their potential takings. We have to address that type of problem. Do you think that the bill will exacerbate the situation?

**Paul Waterson:** As an operator, I would apply for as many hours as I could get, although I might not use them all. That is what people will do. The competitive nature of the business dictates that, if one operator has an hour, others will want that hour. If an operator shuts at 2 o'clock in the morning, others will want to shut at 2 o'clock in the morning. It goes on and on. We suggest permitted hours and recommend that local licensing boards should be able to introduce an hour's flexibility. We suggest saying exactly what we mean by entertainment and which hours operators could open. The same rules should apply to pubs and to off-sales.

The Bar Entertainment and Dance Association agrees with that, as does the Scottish Grocers Federation. We all agree that we do not want to encroach on one another's times. The public will be well catered for. The issue is not 24-hour opening but who caters for whom in the cycle of opening. That is all important, because over-provision will only get worse. I have used the word "chaos" a few times, but I believe that chaos will ensue. There will be all these operating plans, which we will have to read to find out whether a place is a pub, a hotel, a nightclub or a snooker hall. That will create a real burden for the licensing boards.

**Michael McMahon:** You talked about the police being objectors. Should an off-sales be able to object to a pub? Should a pub licence holder be able to object to a nightclub?



**Paul Waterson:** Yes. I think that they should be able to object. The operators have an important part to play.

**Michael McMahon:** Will you explain why?

**Paul Waterson:** We have been shouting about over-provision of licences since the previous act, the Licensing (Scotland) Act 1976. Why should an operator not be able to say that they are objecting on the ground that they believe that if a licence is awarded it will create over-provision? It is up to the board to decide whether someone is being frivolous, vexatious or is just trying to protect their business.

**Tommy Sheridan:** Your figures on over-provision are interesting. You talk about a 50 per cent increase in the number of licences in the 22 years from 1976 to 1998, despite a fall in population. I am playing devil's advocate here, but some would suggest that it is in the interests of your association to argue for a restriction on the market in order to protect your existing members. Do you want to dispel that view? Is yours a genuine health-motivated argument or is it a case of trying to defend the existing market?

**Paul Waterson:** Not only are the numbers going up, but, with the introduction of massive, so-called superpubs, the square footage is increasing. We have watched the competitive edge take over, but it has not created a better pub estate or an estate that is at ease with itself; it has created a situation in which prices have come down and standards have fallen. We need competition, but we have gone over the edge into over-competition, which is dangerous when alcohol is involved. We have watched good operators being forced out of business by irresponsible operators. We need competition, but that is entirely different from indiscriminately granting licences throughout the country. We are genuinely trying to do something to stop the problems that we have.

The biggest signal of over-provision in any market is downward pressure on prices, which is what we have. One does not have to go a long way from here—to George Street in Edinburgh, for instance—to see new pubs opening all the time. That looks okay, but if one walks a street away to Rose Street, one sees the effect. There are problems in the Grassmarket and throughout Edinburgh. In city centres throughout Scotland, problems arise at the weekend because operators vie to attract the same people, which is not good for anybody.

**Tommy Sheridan:** The bill presents an opportunity through the grandfather rights issue. Your submission states that you hope for a moratorium on the granting of licences, but perhaps you guys should press for the bill to state that no more licences should be granted for five

years. You say that there are already 17,583 licences in Scotland, which you think is over-provision. Why do you not use the opportunity to press for a moratorium and to argue that we should not grant any more licences for at least five years?

**Paul Waterson:** We have said on numerous occasions that that is what we want and that there are too many licences in Scotland. However, we should not take licences away from people. Our suggestion would not stop licences being transferred within the system. If a person wanted to open a 10,000ft<sup>2</sup> pub, they would have to acquire licences up to that—they could transfer licences within the system so that they had two for 5,000ft<sup>2</sup> or 10 for 1,000ft<sup>2</sup>. Through time, that measure might lower the number of licences. However, we are not saying that people should lose their licences.

The easiest approach would be to introduce a moratorium. On a given day, we should say, "That's it; the pub estate in Scotland is complete. People can transfer within the system, but we have enough licences already." That has happened in other parts of the world and it works. It has been done in Ireland and has not ruined competitive business there—the Irish pub is the most copied brand in the world. The measure has helped the Irish to keep up standards and to combat alcohol abuse. A similar measure here would do the same. It can be said against us that we are trying to protect the trade, but we are trying to protect its integrity, dynamism and diversity.

**Tommy Sheridan:** Tell us a wee bit more about Ireland. Is there a robust system of granting licences and has the number of licences been restricted?

**Paul Waterson:** The situation is a bit complex, but there have been no new public house licences in Ireland since 1902. The system has been in place for a long time. In the 1960s, licences were even bought back because it was thought that there were too many. The measure has worked there, so why should it not work here? It has not stopped the Irish business growing—the Irish pub is the most copied brand in the world.

**Tommy Sheridan:** We are waiting for clarification on what the Executive will do on the issue of grandfather rights—there is a big vacuum, if the truth be told—but your evidence on the matter is that no more licences should be granted, although it should be possible to transfer existing licences and rights. You do not think that licence holders should have to go through the process of gaining new licences. However, if that were to be required, what should the timescale be?

**Paul Waterson:** We have to have grandfather rights. If someone has a pub that has been

granted a continuation of its licence for the past 20-odd years, would they now have to apply for a new licence? The pub might not be up to standard on access, for example. I know of some pubs whose door widths do not comply with building control standards. It would be ridiculous to say to the licence holder, "You've got to apply for a new licence and all that that means." Are we really going to say to somebody who has been in the business for 20 years, "You're going to have to apply for a new licence, but your premises are not up to new building regs so you're not going to get it"? That is nonsensical.

Of course we have to have grandfather rights. I would not mix up grandfather rights with the over-provision argument. It is clear that there should be a ceiling on the number of licences and no more licences should be granted in the system. We should work with the pub estate that we have now.

**Tommy Sheridan:** What is your recommendation for the grandfather rights system? Are you saying that people should have their licences in perpetuity? There must be some situations in which people will have to reapply under the new system of new licences.

**Paul Waterson:** Why should people not have a continuation of what they have at the moment? What is the problem with that? We do not want to take licences off people who have been doing fine running their businesses. There is absolutely no reason to do that. Will the new system be introduced over a three-year period—the age of a licence—or should people go on with what they have at the moment?

**Bruce Crawford (Mid Scotland and Fife) (SNP):** A couple of questions arise from that. First, I am interested in what you say, but I want to be clear about grandfather rights. We heard evidence yesterday that some establishments in Glasgow are one-toilet wonders. Are you saying that in this day and age we should accept a situation where only one toilet is available on a public house premises?

**Paul Waterson:** Some public houses have been run for years in a certain way because the physical make-up of the premises does not allow licence holders to do anything else. Are their businesses going to be taken away after 30-odd years? Many well-run pubs do not come up to every detail of building control regulations. Are we really going to tell those licence-holders that we are going to take their livelihoods away from them? I do not think that we could ever agree to that. There are other ways of making improvements.

**Bruce Crawford:** Tell us about that, then, because we need to hear about ways of getting some of those establishments to the required standard without closing down those businesses.

**Paul Waterson:** It would help if licence holders knew what system they were working to. We do not know what the opening hours will be, we do not know what the over-provision will be, we are still waiting for those details. People might then invest a bit more in their premises. If everybody knew those fundamental details, we would see a lot more investment. The pub estate has improved enormously and I think that everybody would agree with that, but there is still a lot of work to be done. We cannot engineer that through licensing law overnight; the market has to play a part in making those changes.

**Bruce Crawford:** My primary question is about over-provision. I am not sure that the situation is as simple as a numbers game. That is what concerns me. I have heard about the Irish situation, but one could look at contrary situations in Spain and Portugal where there is virtually no licensing and the only law is that you cannot buy drink until you are 20. Those countries have a different attitude towards drink. The issue is not just about the number of licences that are available; it is also about the density of licence numbers in particular areas. One could cap the number of licences, but the density would still increase in particular areas whereas other areas that need pubs are losing them.

**Paul Waterson:** Nothing is simple when it comes to over-provision. Who is to say whether four or five pubs are too many? There is no perfect situation. If we could rely on licensing boards, they could look at that density problem. All we are saying is, "Let's start by looking at the numbers." The numbers are there, premises could be transferred within the system and we could then rely on licensing boards to look at density problems. I cannot think of another way to do anything about the situation.

**Bruce Crawford:** Is there not a danger that that would divert some investment? One could end up with an internal market whereby licences were transferred and paid for between people, whereas the money should go into the products rather than into people's pockets.

**Paul Waterson:** People have said that this approach is nothing but a money-making proposition and that we are only trying to give the licence some worth. However, I tried for years to come up with a way of doing all this without giving the licence some worth, but I was not able to do it. Then one day someone said to me, "So what if the licence has a worth? Perhaps that'll make people look after it better." There is no running away from the fact that the licence will have a worth. It might arise over a period of time, but I cannot think of any way of preventing that. However, I should point out that that is done not for the reason that you have suggested, but to protect the business.

After all, stabilising the market is the long-term solution to the problem of drinks promotional activity; banning such activity is only a short-term solution.

14:45

**Bruce Crawford:** I respect your position, which you accept is not ideal. What discussions have you had with the Executive about defining over-provision in such a way that the trade, and the regulators through the licensing boards, felt that it would hold water on a national basis and at least provide a standard to work with?

**Paul Waterson:** We discussed the matter with Sheriff Principal Nicholson, who seemed to agree with us but shoved the matter on to the white paper. In the white paper, Cathy Jamieson agreed that we had to do something, but she made no specific proposals and shoved the matter on again into the bill. The bill is now shoving responsibility for coming up with a solution on to licensing boards. As far as I know, the SLTA is the only organisation that has said, "This is what we would like." Some have suggested that we could make an equation involving capacity, square footage and the target market. However, things start to become a bit complex. We have had discussions with everyone, but no one has come up with any solutions. Some say that it is all a matter of gut reaction and that you simply know when there is over-provision. For example, we have applauded the things that Edinburgh has achieved in the Grassmarket. It is down to the licensing boards' discretion and we will wait and see how they carry out their assessments.

**Bruce Crawford:** Have those discussions focused primarily on over-provision?

**Paul Waterson:** The principle has always been agreed—

**Bruce Crawford:** Yes, but I am trying to understand who, if anyone, is putting forward ideas.

**Paul Waterson:** We have been going on about this for a long time and, for many years, people said that we were simply interested in closing off the market. We foresaw the problems with cut-price alcohol and with the availability of alcohol, which is a major factor in its abuse. However, when people started to see that what we had said was coming true, they began to agree and say, "Well, maybe we should look at over-provision." In her preamble to the white paper, Cathy Jamieson clearly said that over-provision is a problem. However, although people have come round to agreeing about the principle, we diverge over how such provisions would be brought into force.

**Bruce Crawford:** I have one more question—or perhaps two more questions—but I will try and be as quick as I can. Would there be any value in the Executive, the licensing boards and the trade trying to find a national definition of over-provision that was not just about numbers? My concern about that—I do not know whether you share it—is that if you go on a numbers basis in those parts of Scotland where competition cannot get in because the numbers ain't available to allow that, the people who are already involved in the market will be able to sit on their hands and not have to re-invest. That situation is different from what is happening in the city centres.

**The Convener:** You said that you would ask a short question, Bruce.

**Bruce Crawford:** I apologise, but I hope that Mr Waterson understands my point.

**Paul Waterson:** As I have said, there is no perfect solution to this problem, but using the numbers is the best approach that we have heard. I understand your point, and acknowledge that it is possible for what you have highlighted to happen; however, the public will make up its own mind. The market will decide where people will go within the pub estate. As a result, I really do not think that what you have described will happen.

**The Convener:** You have already raised your concerns about having only one type of licence. Would such an approach make it more difficult to assess whether there is over-provision? After all, the licensing board might feel that there are enough off-licences in a particular locality but would feel comfortable about, for example, granting a licence to a restaurant.

**Paul Waterson:** It would all be one licence under the bill, so we will all be in the hat together, but I do not understand why. The entertainment licence is a good concept, but the Nicholson committee did not understand the competitive nature of the business and made the mistake of lumping everybody together, thinking that licensees would not compete with each other. I do not understand why it thinks that. Who knows? It will be a bureaucratic nightmare when licensing boards have to decide on situations in which somebody wants a licence next to premises that are already licensed and the board has to determine what kind of premises the new licence would apply to. Why go down that road? Why even go there? Why not try to make the system simple?

**Margaret Smith (Edinburgh West) (LD):** I ask for a small point of clarification on what you said about a moratorium. If I understood you correctly, you said that no more licences should be granted. Are you calling for a moratorium on new licences only for public houses or are you including

premises such as hotels, members clubs and off-sales premises in large new housing developments such as that at the waterfront in Edinburgh? Are you suggesting that the moratorium should apply across the board, or simply to new licences for public houses?

**Paul Waterson:** There will be transfers within the system. It will be possible to transfer a licence from one area to another, so, if there was a new area in which a licence was needed, it would have to come from somewhere else. One of the problems is with hotels. It would not be right to stop a 150-bedroom hotel going ahead on the ground of over-provision.

**Margaret Smith:** Exactly.

**Paul Waterson:** That does not make the idea wrong, and we could take that scenario into account. Conversely, we do not want somebody to open a 150-bedroom hotel and stick a nightclub with a capacity of 5,000 in the basement. That, too, must be considered. It could be that the size of the premises would reflect the number of residents.

**Margaret Smith:** Tourism and the licensed trade more generally have a major impact on the economy of Edinburgh, part of which I represent, so to have a moratorium on new licences for any new hotels would not be a good way to go.

**Paul Waterson:** That is not what we are saying at all.

**Margaret Smith:** Do you envisage that the moving around of licences would be based on an internal market such as that about which we have just heard, or on the licensing board passing on licences that had been withdrawn from premises elsewhere?

**Paul Waterson:** There is flexibility in the system, whether licences become available because of licensees going out of business, licensing going into abeyance or licences being transferred, so there is plenty of room for manoeuvre if somebody wants to open new premises. It would not stop new premises from opening; we must be clear on that. Hotels might be the one anomaly, which we could examine. However, Edinburgh has plenty of licences just now, as, probably, has the Edinburgh licensing board. Some will fall off the end, some will be sold and some people will come in with new ideas, which is how the system should work.

**Mr David Davidson (North East Scotland) (Con):** Some of the questions that I was going to ask have probably been done to death. When I read your written evidence, I thought that it smacked a wee bit of protectionism, but you have expanded on those comments and I understand some of the argument. However, grandfather

rights present an opportunity to remove badly run and underinvested premises from the market.

You put up a defence for a traditional old harbour pub that has existed since 1705 and cannot be changed to comply with fire regulations because it is a listed building, but do grandfather rights not present an opportunity for people to come into the trade and to encourage licensees to sell their licences? If they want to transfer them as you have suggested, that would be fine, but it will not be easy to buy lock, stock and barrel a premises that has been told that it has to move from, for the sake of argument, the Grassmarket down to the waterfront. A lot of strange practicalities are involved.

What does the SLTA think about grandfather rights? Do your members totally agree that things should continue without any changes whatsoever and that there should simply be an automatic right to licences, or is there an opportunity for improvement of the estate, as you call it?

**Paul Waterson:** There will be changes. There will be changes in hours and there will be new licensing board ideas on a whole range of matters. What we are saying is that licences should not be taken from people because they cannot fulfil certain conditions of building control, for example, or other things. A licensee's hours could well change. We are not saying that changes should not be introduced, but that should be done over a period of time when it is fair and timeous to do so.

You mention premises that are badly run. If premises are badly run, they should be taken care of in other ways under the new system, which we welcome.

**Mr Davidson:** Does the market have a role to play in that?

**Paul Waterson:** We are talking about licensed premises—licensed for very good reasons—and the market must be seen in that context. The market is not a free market. Its normal pulls and pushes must be controlled in some way. If we did not have a problem, we would not be sitting here. We have identified problems with alcohol abuse and other problems in the licensed business and we must attend to them. This is the time to do so. The legislation must last us a long time—it must last for five, 10, 15 or perhaps 20 years, rather than for two or three years. We must get things right now.

**Mr Davidson:** At the beginning, you said that you wanted the uniform application of licensing law throughout Scotland. How much flexibility in its powers does your association think that each board should have?

**Paul Waterson:** That depends on what you are talking about. If you are talking about opening

hours, we would like to keep the system of permitted hours. The three-licence system would be clear about when premises could and could not open, but we agree that there should be a degree of local flexibility—there could be an hour here and perhaps a couple of hours there.

On over-provision of licences, we have said that licensing boards should not have a discretionary power and that clear numbers should be set, although licensing boards should perhaps have flexibility in respect of density. I think that licensing boards will have a degree of flexibility in respect of drinks promotions because every eventuality in what operators do cannot be foreseen. If licensing boards think that something is impinging on the licensing objectives, it should be stopped.

All operators and staff should be trained—we have crusaded for that for a long time. We are committed to such training and are happy to see it, but we would also like there to be an experience requirement for licence holders. An 18-year-old could hold a licence, but we do not agree that they should be able to do so. We think that they should have at least a couple of years' experience because people need experience as well as training. Boards would therefore not have flexibility on such matters, but there should be flexibility for them to listen to objections to prospective licence holders. Those are the key areas, and a degree of flexibility is involved.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Good afternoon, gentlemen. Paragraph 9(2) of schedule 3 states:

"Tap water fit for drinking must be provided free of charge on request."

Early this morning, I heard on BBC radio that you do not agree with that. Why not?

**Colin Wilkinson (Scottish Licensed Trade Association):** That matter has been given quite an amazing amount of attention. Currently, licensees must make available water and bread for travellers. We simply pointed out that the excessive costs of water charges are another big concern for licensed trade. Water is not a cheap commodity nowadays. In order for somebody to purchase a product in licensed premises, the licensee must obviously pay for the whole hospitality package. Most licensees will not charge someone for a glass of water. We just question why, among all the other problems that are dealt with in the bill, we need to legislate for such a requirement to be placed on the on-sales trade.

**Paul Waterson:** We are not saying that licensees should not give customers a glass of water. We are simply highlighting the fact that, these days, they incur a substantial charge for that.

15:00

**Fergus Ewing:** I understand those arguments and have anticipated them. However, if a charge is made, what might constitute a reasonable charge?

**Paul Waterson:** We would not recommend our members to charge anything for water, but individual licensees might want to do so in their own premises. However, should they then charge for ice as well? The thing becomes ridiculous.

**Fergus Ewing:** It is a perfectly legitimate point that water rates need to be paid for. Water is not free but subject to charge and licensees also need to pay their staff. That is the reality of the world.

**Colin Wilkinson:** That is why I said that pub customers pay for a hospitality package rather than a single product.

**Fergus Ewing:** Quite.

**The Convener:** I suspect that the volume of water that the average pub uses will be largely determined not by how many glasses of water it hands out, but by the amount of water that it needs for cleaning and for toilet facilities.

**Paul Waterson:** Water rates can be a significant amount of money. The cost even for a small pub can be £3,000 a year, which is quite a cost.

**Colin Wilkinson:** We do not need to legislate for tap water to be provided in pubs.

**Fergus Ewing:** Since this morning's radio news item, you seem to have developed some coyness as to whether pubs should be able to make some charge for water. Can you recommend what amount a licensee who decides to charge for water should charge?

**Paul Waterson:** We would not recommend any charge. We were not on the radio this morning. I did not hear that news item.

**Fergus Ewing:** Okay. It was very early. Perhaps I should have brushed my teeth more vigorously.

My second question is on a more serious issue. Paragraph 9(3) of schedule 3 provides that other non-alcoholic drinks, such as fruit juice,

"must be available for purchase at a reasonable price."

What is the SLTA's view on that provision?

**Colin Wilkinson:** We have been through all this before. As far back as 1997, our counterparts in England demonstrated in their submission to a Department of Trade and Industry investigation into soft drinks prices in licensed premises that the trade's prices were not excessive. Comparisons with supermarket cafeterias showed that, given the average quantity of such drinks that are served in licensed premises, our charges are not excessive. In 2002, a DTI report on price marking orders highlighted the need for soft drinks prices to

be displayed clearly so that they show the quantity that is being served. We have been through all this before. It has been proved that the trade does not charge excessive prices for soft drinks.

**Fergus Ewing:** It would be easy to conclude that it would be reasonable to charge 50p for a soft drink but unreasonable to charge £5. However, between those two prices, the question whether or not a charge is reasonable is extremely difficult to answer. I am not sure whether licensees could be threatened with litigation under the provision or whether they would simply receive complaints. Do you agree with me that the provision as currently drafted is too vague?

**Paul Waterson:** Absolutely. We do not know what it means. How would you decide what constitutes a reasonable charge in a five-star hotel or in a working man's pub on the corner? Neither of us knows what the provision is trying to get at.

**Fergus Ewing:** That makes three of us.

I want to raise one other issue, if I have time.

**The Convener:** You must be brief.

**Fergus Ewing:** In my constituency, certain licensed premises have been involved in a spate of insolvencies, which have been closely followed by the formation of new companies that employ personnel who were employed in the previous business. Usually, the licensed premises is owned or leased by a limited company, so the same people whose first business went bust have been able to set up another business. Not surprisingly, the problem for the local authority is that the insolvent business has left a large string of debts, which include debts for non-domestic rates. I imagine that your members would not support that, because it would discriminate against those who pay their business rates, which I suspect would be higher as a result. Would you favour legislative measures that aimed to stamp out that practice—difficult though it may be to achieve—which is a severe drain on government, particularly at local level, and results in an unfair competitive disadvantage for those members who pay their bills?

**Paul Waterson:** The premises licence could help in that regard, in that premises could lose their licences, rather than people. If the same people are involved, licensing boards could take a view. Some local authorities have used non-payment of rates as grounds to refuse a licence. Without knowing the facts of particular cases it is difficult to agree or disagree with that, because every case is different. It is hard to give a view.

**Fergus Ewing:** Perhaps you could come back to us on that because, like you, I can think of different and difficult circumstances, but I did not know that licensing boards had used the non-

payment of rates as a basis for refusing or not renewing licences. It might be useful to us in our task to have more information on that.

**The Convener:** I have a final question on fees. Do you have a view on the appropriate level of application fees to support the administration of the new licensing system? Should fees be based on the type of operation or the type of licence? Should they be based on the capacity of the operation that is applying for the licence?

**Paul Waterson:** One thing is for sure: it is going to be difficult to come up with something that pleases everybody. When we examine the potential cost of liquor licensing standards officers and so on, we can see the costs mounting up. The fair approach would be to base fees on the ability to pay, so bigger places would pay more than smaller places. We have taken no view on that yet, but the costs will be significant.

**The Convener:** That brings us to the end of questioning. I thank Paul Waterson and Colin Wilkinson for their contributions this afternoon.

We move straight to our second group of witnesses. Representing the British Retail Consortium we have Kevin Swoffer, who is the head of technical services, and representing the Portman Group we have David Poley, who is the director of compliance and good practice. Do both of you want to make introductory remarks?

**David Poley (Portman Group):** I do not.

**Kevin Swoffer (Scottish Retail Consortium):** Yes. Thank you for the opportunity to meet the committee. We want to share with you our experience and our proactive approach to meeting the aims and objectives of the bill. More important, we would like to say that, as retailers, we suffer from antisocial behaviour, so we welcome input on that. We very much supported the Antisocial Behaviour etc (Scotland) Act 2004 and believe that it can help our members.

**The Convener:** Thank you. We will now move on to questions.

**Paul Martin:** Schedule 3 to the bill refers to "irresponsible drinks promotions". You might have heard questions being asked on that issue earlier. The provision specifically addresses premises where alcohol will be consumed on site, so it does not refer to the off-licence trade. Is there an argument for including the off-trade in the irresponsible drink promotions provision?

**David Poley:** The Portman Group distinguishes between the on-trade and the off-trade when it comes to promotions. It is necessary to regard such promotions in the on-trade a little bit differently because any alcohol that is purchased is for immediate consumption. If a promotion is run in the off-trade, we can be sure that it will affect

purchasing patterns, but it will not necessarily impact on drinking patterns, whereas if a promotion is run in the on-trade, if it affects purchasing patterns, it will almost inevitably affect drinking patterns. That is why we would say that there is more concern about promotions in the on-trade than in the off-trade.

**Paul Martin:** Are there concerns about under-age consumption in connection with the off-trade? Many of the drinks that are promoted are targeted at young people. Many of the promotions, such as a deal that offers six for the price of two, are about ensuring that people have the opportunity to bulk buy and consume afterwards. Is there not an argument that that is irresponsible? Would you say that all the promotions that are conducted in the off-trade are responsible?

**David Poley:** I am not saying that the off-trade is blameless and completely clean, but when there is an incentive to purchase additional quantities in the off-trade—discounts for volume—it does not necessarily mean that it will lead to binge drinking, because the alcohol is not necessarily for immediate consumption. The consumer has the opportunity to take the alcohol away, store it and drink it at their leisure over a period of time. For example, if a supermarket offers the opportunity to buy two cases of 24 bottles of beer at a discount, that does not necessarily mean that the consumer will go away and drink them all there and then. It perhaps means that they will go to the supermarket less frequently and that it will be longer before they pay a repeat visit because they have stocked up on the item. Obviously, if there was a comparable offer in the on-trade, it would be grossly irresponsible to incite people to buy 48 bottles of beer.

**Paul Martin:** We are talking about irresponsible promotion, which promotes the irresponsible consumption of alcohol. It could be argued that although in the on-trade some people will not take part in a happy hour, the promotion is part of getting them in in the first place. It is the same with irresponsible off-sale promotions—they are about getting people through the door. Is there an argument for a provision in the bill that refers to the off-sales trade in connection with preventing people from consuming alcohol irresponsibly?

**David Poley:** Something could be put in the bill, but I would not treat the two sectors in exactly the same way. There might be an argument for including something to prevent below-cost selling of alcohol, although in practice it might be difficult to enforce. People might argue that alcohol is not a suitable product for supermarkets to use as a loss leader, whereby they sell it cheaply and make up the loss that they incur on other goods that they sell. Supermarkets might be expected to present such offers in responsible, restrained ways and

not as an invitation to get drunk. For example, they should not say, "Buy 24 bottles and have a very, very merry Christmas," or something like that. A supermarket could be criticised for presenting an offer as an invitation to drunkenness.

**Paul Martin:** You would say that there is an argument for a provision in the bill that is not exactly the same as schedule 3, but is specific on the issue of irresponsible promotion.

**David Poley:** Possibly.

**Paul Martin:** A provision that would take into consideration the difference between the two markets.

**David Poley:** Yes.

**Paul Martin:** Should the bill also deal with the drinks to which young people are attracted?

15:15

**David Poley:** That might be where the Portman Group's code of practice comes in. The Portman Group is funded by the United Kingdom's leading drinks producers. Our member companies own no pubs or off-licences; they are just drinks producers that supply retailers.

On behalf of all drinks producers, we operate a code of practice to ensure that alcohol is marketed, named and packaged responsibly. One provision of that code says that drinks should not be named or packaged to appeal particularly to under-18s. If a drink was seen to appeal by its nature to under-18s, it could be referred to the Portman Group and an independent complaints panel would consider the complaint. If a product is found to be in breach of our code of practice because of its name or packaging, we would take action on it by issuing a retailer alert bulletin that asks retailers not to stock the product until it is amended to comply with the code.

**Paul Martin:** So it might help you if we found an opportunity to write such best practice into legislation.

**David Poley:** It would help if legislation or guidance under it endorsed and recognised our code of practice and placed an expectation on retailers to abide by retailer alert bulletins that are issued about products that breach our code.

**The Convener:** I will ask a bit about possibly irresponsible promotions in the off-trade. Paul Martin covered pricing. Do you have views about the location of alcohol in premises? For example, a special promotional product might be available at the entrance to a supermarket. Given the recognition that alcohol is a different type of product from the other products that are sold in supermarkets, should we ensure that alcoholic drinks are not placed at the front door or at the

checkout, where someone might impulse buy at the end of their visit?

**David Poley:** Our code of practice used to have a section that dealt with such retailer responsibilities, but when the code was last revised about three years ago, we took that section out to make the code simply for drinks producers.

Our code of practice used to encourage retailers to site alcohol in a separate section in a supermarket or whatever, but we concluded that that might be unduly restrictive, because most stores have a whole-store licence, so they are entitled under their licence to situate alcohol anywhere.

Stores often like to highlight offers and to place them where people enter a store, as you say, or at the end of an aisle. Stores sometimes want to tie in products with promotions that they run. If a store had a Japanese month, it might want to place sake among Japanese foods. A store might want to put a bottle of port or wine among cheeses, to create an association. We do not have a major problem with that. However, our general advice to retailers is that they should avoid situating alcohol where it might cause confusion with soft drinks. If a store has chiller cabinets, we say that alcohol and soft drinks should be kept well apart, so that people do not choose an item by mistake. We also say that stores should avoid situating alcohol anywhere near items that are popular with children, so it should be kept away from products such as confectionery.

**Kevin Swoffer:** I back what David Poley said. The issue is far easier for larger companies, because they have designated areas for merchandise and have sophisticated merchandising plans for stores. In larger retailers' premises, promotions are usually situated exactly where we would want them to be—few promotions are placed outside those areas. The situation is complex for smaller premises, because specifying distances and other details is prescriptive and burdensome. However, there is a good argument for revisiting the issue to back up the information that was issued originally and to remind retailers, large and small, of where they should site alcohol promotions. That should not be over-prescriptive, but should take the form of a code of practice on promotions, along the lines of the present code of practice. The guidance should be well written and in a good form that people can understand. We should consider the matter further.

**The Convener:** Michael McMahon might raise this issue in more detail, but I mention the potential problem that we have identified with the delivery of alcohol products, particularly from supermarkets. Sorry about this, Michael—I will let you in in a moment. People now order goods over

the internet and over the phone, which creates a potential loophole because delivery drivers might not check the age of the people who receive the goods. My question is really for Kevin Swoffer. Is there a loophole in the law and, if so, should it be closed by requiring people who deliver alcoholic goods—although if the sale was made over the phone, they might not have made it—to ensure that they do not fall into the hands of under-age people?

**Kevin Swoffer:** I fully understand those concerns. E-shopping is relatively new in the retail industry, but I have discussed the issue with my members, particularly as a result of the introduction of the Licensing Act 2003 in England and Wales. If orders are taken over the phone, they can be paid for only through a bank account or a credit card that is for people of a certain age. Therefore, the person is deemed to be responsible and over 18. When companies such as Tesco make home deliveries, the drivers are asked to carry out the same procedure as is carried out when alcohol is sold in their stores. The procedure is called challenge 21: if the person who receives the goods looks under 21, they are asked for proof of age, such as a driving licence, a passport or other photographic identification such as the proof of age standards scheme—or PASS—card. Major retailers take a responsible view on e-shopping.

**The Convener:** I apologise to Michael McMahon for stealing his core question, but he can now ask supplementary questions on the issue.

**Michael McMahon:** In effect, the bill will introduce a no-proof, no-sale requirement. Will that help to reduce antisocial behaviour by reducing sales to young people, or is something more required?

**Kevin Swoffer:** That is a complex issue. The retail industry has always advocated a national proof of age standards scheme, which is why we have been supportive of card schemes in the past and will be in the future. A national scheme would be a benefit, because it would be a controlling factor, so it would be a retrograde step not to introduce one in the bill. The big problem is that even if retailers sell alcohol to a responsible person, once it leaves the premises, its movement is beyond their control. That is a major problem, but the card schemes that have been introduced are a benefit. We advocate a national card scheme and we have given written evidence to the Scottish Executive about that. However, the bill does not prescribe a standard scheme; it calls for an authorised scheme, but it does not say which scheme would be preferable.

**Michael McMahon:** As Bristow Muldoon has mentioned, the purchase of drink might not be problematic to the retailer but delivery is. I am not



talking about Tesco making sales via the internet but about a corner shop off-licence developing what is known in our neck of the woods as a dial-a-drink service, where people can phone the shop and get the drink delivered in the same way as they would have a Chinese meal delivered.

There is a gap in the legislation. The Nicholson report that forms the basis of the legislation did not address that issue because it was a phenomenon that we were not aware of at the time. Should the bill be tightened in some way to address that new way of retailing alcohol, which is one by which young people can access alcohol without physically going to the premises in which it is sold?

**Kevin Swoffer:** I see no difference between the systems or procedures that should be in place for the sale of alcohol over the telephone or the internet and those that should be in place for a face-to-face sale in a store. We advocate having in place the same systems and procedures that are in place in retail outlets for sales within the control of such premises. That is the guidance that is in "Responsible Retailing of Alcohol: Guidance for the Off-Trade". We would want that best practice to be pushed across every mode of sales within each operation.

**The Convener:** You mentioned Tesco's good practice in that regard. Could you give us a briefing note to let us know what guidance a range of your members give to delivery drivers and what protocols they have in relation to that type of sale?

**Kevin Swoffer:** Yes.

**Michael McMahon:** You might not be able to help me with the subject of my next question but it concerns a matter that has been brought to my attention.

There is now a market for limousines, for example to take out parties of young people on a Saturday night. Apparently, limousine hire is dealt with under the taxi-licensing regime but, of course, those limousines can carry alcohol. Can you give us any advice on how we could tighten up the legislation to deal with the provision of alcohol to young people in such vehicles?

**Kevin Swoffer:** That is an interesting question. I have not thought about the issue before but, a few weeks ago, I said goodbye to my son as he and his friend set off to central London in a limousine for a 21<sup>st</sup> birthday party. They had a couple of girls and a cabinet of drinks in the car, so I was quite envious, but there you go.

The situation is no different from that of a company that sells drinks over the bar on a pleasure cruise on a weekend afternoon. Both situations concern a bar in a mobile retail unit. If there are persons under the age of 18 in the car,

in the interests of the responsible sale of alcohol, the mobile bar should be licensed in exactly the same way as the one on the boat would be.

**Michael McMahon:** Should that be brought within the ambit of the bill?

**Kevin Swoffer:** I think so, yes.

**Dr Jackson:** Yesterday, at the informal evidence-gathering session in Glasgow, we were talking about licensed premises and the fact that it might be helpful to have a penalties system to deal with premises that are not well run.

The Scottish Executive's policy memorandum talks about the dangers of under-age drinking, which we all know about. It highlights a study that points out that the most common source of alcohol for youngsters—some as young as 12 or 13—is the small licensed grocer or corner shop.

We have heard about the difficulties that can arise in connection with supermarket deliveries and you have spoken about a code of practice in that regard. I have three questions on the matter. First, do you think that a code of practice will be sufficient? Secondly, how would it be enforced? Thirdly, could penalties be applied to off-sales in the same way as people suggested they could be applied to on-sales at the information-gathering event yesterday?

15:30

**Kevin Swoffer:** It is pertinent to consider all aspects. One of the things that the bill will do is to bring people together from the point of view of communication, so that offending premises can be dealt with fairly swiftly and adequately using the proposed measures. Sanctions and penalties have their place within that framework. As I said, once alcohol has left our premises, it is difficult for us to judge where it is consumed. However, any responsible retailer would want to work within the framework to ensure the responsible consumption of alcohol. When communities, off-licences, retail outlets and supermarkets get involved in local forums, there is much more two-way communication about issues in the local area. That is one of the benefits of the local forums working with communities. Part of that is policing and we advocate stern enforcement as a deterrent to irresponsible consumption of alcohol.

**Dr Jackson:** Should the bill mention explicitly the development of a code of practice and penalties for off-sales? How would that be incorporated in the bill?

I have considered forums in more detail since I put the following question to the previous panel earlier this afternoon. If there were one licensing board for a council area, there would be only one forum. Although there would be other

representatives from the community on that forum, only one member of the public might be represented. Would such forums be as effective as you suggest?

**Kevin Swoffer:** If one looks at the England and Wales model for applying for, advertising and granting licences and for transitions and variations, one finds true public consultation in local areas because information is placed in the public domain. If one wants to object, there is a mechanism by which views can be fed in. It is important that forums are seen to work closely with local communities and that retailers can be part of that process.

On how we can push for the development of a code of practice, David Poley rightly alluded to the guidance that will support the bill. We have produced our own code of practice, which we have pushed very hard. We are also producing an age-restricted sales booklet specifically for Scotland that will include sections that relate to the bill and which will be available in the next few weeks. To ensure that the public know about the bill, it is incumbent on us all to provide high-level publicity and public relations—information to tell the public what the bill will mean. That is important and is one thing that has not been done well in England and Wales. The licensees seem to know what is going on, but there is misunderstanding among the general public about the aims and objectives of the Licensing Act 2003. There has been much speculation in the media about 24-hour licensing, and that has been mixed up with different messages about which the public are becoming confused. There is a good argument for making the aims and objectives of the licensing legislation more public.

**Dr Jackson:** It would be useful for us to get the information about the code of practice. You mentioned consultation with the community in England and Wales, but is the situation there the same as what is envisaged here, which is that if there is one licensing board for one council area, there will be only one forum?

**Kevin Swoffer:** In Scotland, the process is far more open. In England and Wales, there are no such forums to be had; licensing boards are very much part of local authorities and information is pushed out to the public in the form of notices and newspaper advertisements. There is little public consultation in England and Wales.

**Bruce Crawford:** I have a couple of questions about under-age drinking. I appreciate your organisation's continuing work on codes of practice and so on, although I am not entirely convinced that all the large operators are necessarily doing the job in the way that you think they are. A lot of agency purchase by those who are involved in passing on alcohol to people who

are under age is done through supermarkets and off-licences. That is a fact of life, and I know that you are doing what you can to help to stop that. I leave corner shops to one side for a moment, but what do you think of the idea of people who sell alcohol in supermarkets having to have a personal licence? The designated person need not be at a designated till, but they would be required to ask all purchasers of alcohol to give an undertaking that it will not be sold to someone who is under 18. It would be a bit like when one checks in bags at an airport; individuals would be asked whether the alcohol is intended for sale to someone who is under 18, so that there would be a check mechanism at the point of sale at least.

**The Convener:** You just want someone to ask you for proof of age.

**Bruce Crawford:** What I am starting to get worried about is people asking me whether I am over 60.

**Kevin Swoffer:** You are absolutely right. We have always been concerned about the control of alcohol once it has left our premises. We must be careful when we talk about the level and scope of training of operators in the retail industry. There is a strong argument, which we fully support, for formalised, accredited training of the licence holder and designated supervisors to ensure that there is understanding at the management and supervisory levels in each retail store. However, we would find it difficult, costly and burdensome to take that right down to individual checkout operators, because of staff turnover and the hours of working in that environment. Many operators are students who work for a small number of hours.

We would expect a certain level of training to be in place. In the major retail companies, a high level of in-house training for supervisors—and, indeed, all staff—is prevalent. In relation to the Licensing Act 2003 in England and Wales, we have been talking to the British Institute of Innkeeping about the publication of a retail-focused training pack for members of the British Retail Consortium and thereby the Scottish Retail Consortium. A retail-specific publication is being drafted and will be placed into retail companies' domain. Our member organisations will be given a common message that matches the syllabus for the formalised and accredited training programmes in a form that they can adapt to use in their in-house training packages, so we will see the same message in Sainsbury's, Tesco and Asda. We are working on that at the moment.

In a retail organisation, there are supervisory staff on the premises at all times. We are making every attempt to ensure that those are trained staff, and that they have the licence holder's authority to sell alcohol. It would be burdensome

to ask a 16-year-old checkout operator to go through formalised training, but she should be trained to a level at which she understands that one of her responsibilities is not to sell alcohol to anybody under 18 or to anyone who is not in a fit state to purchase alcohol.

**Bruce Crawford:** I can understand that cost is an issue for you, but we have to balance that against the social cost to the community of alcohol finding its way into the hands of under-18s, or indeed of under-18s managing to buy it straight from the till. I would ask you to reflect on my question whether everyone who is buying alcohol should be challenged about whether they are selling it on to someone under 18. If we do not have a system under which everyone who sells alcohol has to have a personal licence, should those who sell alcohol not at least be certificated to do so after going through a formal programme of training and be 18 or over themselves?

**Kevin Swoffer:** I talked about cost, but the cost also relates to practicalities. The turnover of checkout staff within the major retail operators is extremely high, although staff receive an element of in-house training before they work on a till. You talk about accredited training schemes and accredited certification, but we have got to be careful to define the scope of that training. I have been on training courses and know that up to 12 hours' training are required to gain an accredited certificate through one of the awarding bodies. Lower-level training, with perhaps an hour's training as part of a formalised process in which retailers could be accredited training providers, is an area that we could investigate further. However, I stress that the issue is not just cost but practicality and how operations work. We would do whatever we needed to do to have that in place, but the major retailers are convinced that their in-house training processes and programmes cover the current problems with the sale of alcohol to people who are under age.

**Bruce Crawford:** It is self-evident on the streets that—for whatever reason—alcohol is getting into the hands of young people and that much of it is sourced from large supermarkets. That is a reality, so we need to do something. However, I welcome the fact that you are prepared to consider my suggestion. There is no reason why that sort of idea could not be in your code of practice. Someone suggested earlier that if it was built into the bill, it would give that suggestion some authority. However, you have still not reflected on my idea of challenging people who are buying alcohol on whether they are selling it on to under-18s.

**Kevin Swoffer:** I was going to move on to that. That question has not been thrown at me before, and it is an interesting one. If someone is going to

give an under-age person alcohol, I wonder whether being challenged at the point of sale by a checkout operator would change their attitude. It might make that person stop and reflect, but would it really stop them providing alcohol to an under-age person? I am yet to be convinced.

**Bruce Crawford:** So am I. I will ask one more question about test purchasing, which is available for cigarettes and other products. How would the Scottish Retail Consortium feel about test purchasing being applicable to alcohol sales?

15:45

**Kevin Swoffer:** England and Wales have had test purchasing of alcohol for a number of years, and we would welcome it in Scotland because it indicates that we have nothing to hide and indicates our sector's status and performance to the enforcement authorities. Anything that can give the politicians, retailers and legislators confidence that the legislation is working or indicate to them that it is not working, which is just as important, is a good policing mechanism.

**The Convener:** David, I think that Bruce has well and truly nicked all your questions this time, but if you have a supplementary, you can ask it.

**Mr Davidson:** He has not quite nicked them all; I will ask what the Scottish Retail Consortium thinks of the bill's provisions on training. Kevin Swoffer has concentrated on off-sales in supermarkets in his response, so I ask him to distinguish between the training that is required in on-sales and off-sales, as the consortium has members in both sectors. Is there any difference in the mandatory training that is needed in the two sectors?

**Kevin Swoffer:** I will try to give a personal answer to that. I have gone through training for the licence holder qualification as part of the BII qualifications. It is interesting that previous speakers talked about differentiating between entertainment, off-sales and on-sales in the premises licence. Because the Licensing Act 2003 in England and Wales is all-encompassing, the training syllabus for the licence holder qualifications is quite large—it covers a number of things. Twelve hours is quite a long time to train and, even with case studies, it is difficult to keep people's interest in that training programme. Because the qualification is for personal licence holders, it allows a qualified person to sell alcohol in a public house, an off-licence or any licensed premises. Therefore, some sections of that syllabus might not be as pertinent as others to somebody who is going to be in the off-trade all their working life. If there is anything to be learned in Scotland from the model in England and Wales, it is that a more focused training syllabus for the

specific sectors is important and should be considered.

**Mr Davidson:** Do you and your different organisations consider that a suitably qualified person must always be available at the point of sale? A personal licence holder might not be on the premises all the time, because they might go off to have a meal, for example. Should it be mandatory to have somebody who is suitably qualified or certificated available to supervise sales?

**Kevin Swoffer:** That has been a major complication in England and Wales, where there has been a great deal of controversy about the interpretation of the Licensing Act 2003. There are some lessons to be learned from that in Scotland.

In most instances in a large retail operation, such as one of the larger supermarkets, the licence holder or a designated premises supervisor who has the qualification will be on site at all times. The larger retailers ensure that their duty managers also have those qualifications, because of the turnover in management moving round the organisations, so it is not particularly an issue for the large retailers.

It is far more difficult for small retailers. Without having a number of trained and registered operators, it would be extremely difficult for a licence holder who runs a small grocery shop that sells alcohol to ensure that if they happened to go out for the day, go on holiday, go off on long-term sick leave or even have a few hours off, somebody with the appropriate qualifications would be on site at all times. Small operators would find it extremely difficult to say, hand on heart, that they would have somebody who has the formal accredited licensing qualifications on site at all times. In a small retail outlet in which only two people work, the licence holder would have to be out of the premises for only a very short period of time for the business to be non-compliant. That would not mean to say that the person who has been retained in the store has not been given the responsibility and has not been trained adequately to prevent the sale of alcohol to under-age persons.

**David Poley:** From the point of view of the Portman Group, because our member companies do not own any licensed premises themselves we have not been sufficiently involved in the licensing debate and the detail of licensing in England and Wales or in Scotland to have a view on the issue.

**The Convener:** I know that some of Tommy Sheridan's questions have been covered, but if he has a supplementary question he should by all means ask it now.

**Tommy Sheridan:** I have been lip-reading apologies from across the room for interference on

my turf, so to speak. I apologise if such an evidence session has already been organised but, given that both sets of witnesses so far this morning have referred to England and Wales, will we hear evidence about the situation in England and Wales? Both sets of witnesses have referred to matters that I am interested in.

**The Convener:** We will discuss that later.

**Tommy Sheridan:** I just wanted to flag that up.

The policy memorandum indicates that alcohol in Scotland costs our national health service £110 million a year. It is implicated in three quarters of violent crime in Scotland and it costs society as a whole £1.1 billion. Do you both accept that alcohol is a specific and unique product and that it is different from other products that are on the shelves in supermarkets?

**David Poley:** Absolutely. It is a special commodity. It has to be treated differently from other commodities for that reason and because it is a psychoactive substance when consumed in excess and is capable of causing harm. That is why there are special rules that relate to all sorts of issues, such as who can sell it, who can buy it and the way in which it should be promoted.

**Tommy Sheridan:** Would you support the placement of warning signs on products and within outlets?

**David Poley:** We are not in favour of mandatory warning signs. Our member companies and a number of other drinks companies have started voluntarily putting alcohol unit labelling on bottles and cans. A little symbol is put on labels stating how many units of alcohol the product contains. Towards the end of last year, the Portman Group also instigated a website, [www.drinkaware.co.uk](http://www.drinkaware.co.uk), which carries Department of Health-endorsed information on sensible drinking. Pages are tailored for all sorts of different groups, whether it be people who are pregnant, the old or the young. A number of our member companies and other drinks companies are starting to feature that website address on their packaging and on their advertising so that consumers are directed towards a source of comprehensive information on the risks of alcohol misuse and so on.

**Tommy Sheridan:** It is not stated on the product, "Excess consumption of this product can lead to serious health problems."

**David Poley:** No. Some companies choose to put on some sort of message like that or perhaps a general message such as, "Please drink responsibly." However, generally speaking, such messages are not put on packaging voluntarily. One reason for that is that the message about alcohol is obviously more complex than the message about tobacco. The message about

tobacco is simple: we can say that every cigarette is harmful to health and that people should not smoke. The message about alcohol is more complicated because alcohol is harmful only if people drink to excess or in the wrong situation, and there are positive health benefits for certain groups if they drink moderately. As it is impossible to get all that information across on a label, if we had just one little soundbite, that might misrepresent the situation. That is why we favour directing people towards a website that contains full information. There is scope for the trade to support the website and the educational initiatives of our member companies by displaying the drinkaware website or by having information available for distribution at the point of sale. Some supermarkets are starting to do that, but more such measures would be welcomed.

**Tommy Sheridan:** Given that we are talking about a substance that can be dangerous if used irresponsibly, do you accept that we should have separate points of sale in supermarkets or try as much as possible to separate general food sales from alcohol sales?

**David Poley:** We talked about that issue earlier, when I mentioned the difficulties that arise because supermarkets sometimes want to highlight offers or build on associations between alcohol and other products, where there are relevant tie-ins. As a general rule, we discourage retailers from siting alcohol in totally inappropriate places, such as among children's products.

**Tommy Sheridan:** You discussed the issue earlier with Paul Martin, but my point is that although you admit that we are talking about a unique and special product that is dangerous when misused, you accept that it should be sold with milk, bread and eggs. If there were no problems with alcohol, that would not be a problem, but given the present level of consumption, should we not try to make it less convenient to buy alcohol?

**David Poley:** We should not make it less convenient to buy alcohol, but we need to ensure that people are not confused when they buy it and that alcohol is not targeted inappropriately at under-18s. We must also ensure that, as far as possible, people who buy alcohol are aware of the dangers of alcohol misuse, but that does not mean that we should go as far as making it more difficult for people who are over 18 to buy alcohol.

**Tommy Sheridan:** Would it be misleading to have a general label saying that excess use of alcohol can damage health?

**David Poley:** Are you talking about information at the point of sale?

**Tommy Sheridan:** I am talking about on the products, the makers of which you represent.

**David Poley:** Right—you mean a label on packaging.

**The Convener:** I have a supplementary point on Tommy Sheridan's line of questioning. Some retailers, such as the Co-op, have started to produce warning labels. From memory, they say that consumption above a certain number of units per day can be harmful to health—not that all consumption of alcohol is harmful to health but that over-consumption could be. If one major retail group can adopt that scheme, I cannot see why it would be harmful to the interests of other groups to go down a similar route.

**David Poley:** I have no objection to that, but it is perhaps more appropriate for the Scottish Retail Consortium to comment.

**Kevin Swoffer:** The Co-op's initiative is to be applauded. The issue is one on which the British Retail Consortium and the Scottish Retail Consortium can get members together to start talking with groups such as the Portman Group. The BRC sits on one of the Portman working groups and endorses its code of practice.

We must be careful, in that we must be mindful of other pieces of legislation. There is no problem with voluntary advice at the point of sale, leafleting and so on. We can look carefully at that idea and encourage it, but when we start to talk about product-labelling requirements, we move into the area of other, non-voluntary legislation. We can certainly investigate what can be done on a voluntary basis in England and Wales and Scotland.

16:00

**Tommy Sheridan:** Sylvia Jackson has already made this point to both of you, but the evidence that is before us shows that 33 per cent of all alcohol that is bought by those who are under age is bought from small licensed grocers. There is a problem with the level and type of sales and we must do anything that we can to address that, for example by attaching health warnings or making test purchases. The industry must do more to recognise that we have a dangerous product; just as cigarettes are dangerous, so is alcohol, but you are not indicating that on the product. That is why I raise the matter.

**The Convener:** I think that the witnesses have already given their view on the issue, so I draw this session to a close. I thank David Poley and Kevin Swoffer for their evidence and their participation this afternoon.

We move on to our third panel of witnesses. Representing the Coal Industry Social Welfare Organisation is Ian McAlpine, and representing the National Union of Students Scotland are its

president, Melanie Ward, and its director, Keith Robson. I invite Melanie Ward to make an introductory statement.

**Melanie Ward (National Union of Students Scotland):** Thank you for inviting us to speak to you today about the Licensing (Scotland) Bill. We welcome the publication of the bill and we support the five key licensing objectives that it outlines. Obviously, it has been developed over a significant period of time and NUS Scotland played a full part in the consultation that was run by the Nicholson committee and the subsequent consultations. We also encouraged our member unions to play as full as possible a part in those consultations.

We take this opportunity to highlight the unique nature of student associations and to point out that providing bars and licensed premises is only a small part of what they do—it is not their main function and it is not their sole reason for existence. Their premises are often used for many different activities and the motivation for having them is to provide a safe place for students to socialise. Student associations operate in unique circumstances in that most of them are open for business for only 30 to 32 weeks of the year, in contrast with the majority of licensed premises. Student associations are non-profit-making organisations; any surplus that they make goes back into the campaigns that they run and into provision of welfare services, clubs and societies and other services for students.

Unlike the majority of licensed premises, student associations are run by trustees who are elected by their fellow students, normally in a college or university cross-campus ballot. Student associations are not run by sole individuals or by shareholders. Many student associations in Glasgow and Edinburgh are represented on their local licensing fora, in which they take the opportunity both to play a full part in the operations of the licensing trade and to highlight the different and unique ways in which student associations operate.

Student associations have a record of running campaigns to promote safe and responsible drinking and to encourage people to take care when they are out enjoying themselves, so we welcome the extension of those values to other providers of alcohol and social facilities. For a number of years now, NUS Scotland has collaborated with other organisations, such as Alcohol Focus Scotland and ServeWise, in running national campaigns on safe and responsible drinking.

Finally, we welcome the fact that the bill includes provisions on registered clubs. We hope that those will encompass student associations, but we are seeking clarification on that from the Executive.

**Ian McAlpine (Coal Industry Social Welfare Organisation):** Good afternoon, everyone. On behalf of CISWO Scotland, I welcome the opportunity to contribute to the committee's discussion.

As the umbrella body for miners' welfare schemes and as a member organisation of the Committee of Registered Clubs Associations—the umbrella body for umbrella bodies of registered clubs—CISWO is particularly interested in the bill's impact on registered clubs. We agree with the bill's objectives of creating a modern, simpler and more flexible licensing system for Scotland and of tackling alcohol abuse head on. However, we sincerely request that the Scottish Parliament and Scottish Executive protect the special status of registered clubs under the new licensing system.

The bill will bring clubs into the same licensing system that applies to pubs and hotels rather than continue the separate system of registration with sheriffs. We generally accept that that makes sense, but the different nature of members clubs must be recognised. A club is a private association of people who have common interests or purposes. Those might be sporting, social or charitable purposes. Clubs are not run for commercial purposes like pubs or hotels, but are voluntary associations that are often at the hub of a community. They are not commercial enterprises.

Given that registered clubs throughout the country continue their sporting, social, community and welfare activities quietly and without detriment to licensed premises, the basic human right to form such a club should not be detracted from to a greater degree than is necessary to achieve the licensing principles. Clubs are private and do not compete with licensed premises for passing trade. As the sale of alcohol is ancillary to their main purpose, the bill should not aim to make them just like pubs. A club's members are entitled to have their club run in the way that they intend and that right should not be prejudiced by licensing requirements that go further than is necessary to achieve the licensing principles.

Clubs that are properly run operate far more tightly than pubs. Members are subject to the rules of the club's constitution and they are under social pressures from other members to behave properly. We feel that antisocial behaviour is not an issue in registered clubs.

I stress the special nature of members clubs and emphasise that they are not open to the general public for the sale of alcohol. That needs to be properly highlighted in the bill to avoid confusion and to prevent opposition from people in the licensed trade and elsewhere who consider that registered clubs compete unfairly with ordinary licensed premises.

**The Convener:** The bill will extend the general licensing system to members clubs, which currently have a separate registration process. You appear to accept that as being a valid way forward while still expressing concerns that the licensing system should not become too onerous for clubs. Are there specific areas that you are concerned could cause difficulties for private clubs?

**Ian McAlpine:** There is a need for proper clarification of various matters, such as the question of how guests are dealt with, about which there have from time to time been grey areas or confusion. Much of the relevant legislation was put in place years and years ago when society was significantly different. In a registered club—in which, as I have already said, the sale of alcohol is ancillary to the main objectives—alcohol is provided for members and their bona fide guests. That is accepted as being fair and reasonable because if it were not like that, clubs would simply operate pretty much like pubs.

It needs to be made clear that a bona fide guest of a member is allowed to purchase a drink—it would be rather inappropriate to suggest otherwise. There is also a requirement to sign in bona fide guests, which is fair and reasonable and should continue. However, as I said, the sale of alcohol is not the primary purpose of many of the clubs that we collectively represent. Often, they have many different activities; for example, miners' welfare schemes often work in partnership with the Scottish Executive to tackle social exclusion by organising community activities for young and old people and they even link in with after-school clubs and so on. Such activities are not in any way related to the sale of alcohol. Therefore, the certificate of registration should relate specifically to any sale of alcohol rather than to general use of the premises.

The other point relates to over-provision. As I have said, private registered clubs do not compete with licensed premises for passing trade and the sale of liquor is ancillary to clubs' main purpose. Therefore, the inclusion of club licences in the overall provision calculation could prevent establishment of commercial premises that might be needed in a particular area. It is therefore important that the bill ensures that registered clubs are not included in a local licensing board's calculation of over-provision of licences in an area. I get the impression that that is the general intention.

**Mr Davidson:** Both written submissions raise questions. Ian McAlpine has talked about some of them specifically, so I would like to direct my questions to the NUS. Section 5 of the NUS submission deals with the consequences of the bill's enactment. Could you be a bit more specific

about your concerns? We accept that you accept the provisions and aims of the legislation, but what do you think about the practical considerations, given that many members of student unions will be under-age and there will be issues of responsibility with regard to the management of the bits of the establishments that are licensed.

16:15

**Melanie Ward:** You are right to suggest that many union members are under-age. That situation is, in many respects, unique to Scotland. Student unions tend to be extremely strict about enforcing the rule that a person has to be over the legal age to consume alcohol on the premises. At all student unions it is necessary for people to show identification that proves that they are students and are eligible to get into the club in the first place. In the vast majority of cases, that identification has a date of birth on it. If someone below the legal age was found to be consuming alcohol or if someone was buying it for a person who was under-age, the student unions tend to have their own disciplinary procedures whereby the person who is caught doing that is brought before a panel of other students and excluded until they are 18. Those rules tend to be strictly enforced. Make no bones about it: student unions take such cases very seriously.

I will address some of the consequences of the bill; I will give an example that is related to the proposal whereby a person would have to be a properly trained member of staff if they are to work in an establishment for three months or more. One of our worries about that is in respect of students as employees. Under a three-month limit, some establishments might employ people for two months and 30 days, but before it was necessary to put them through training their employment would cease and someone else would be employed. That could easily be done in areas where a high number of students are available for employment and are looking for jobs. We urge the Executive to think about such issues and to consider the consequences and how they would affect students as a workforce.

**Keith Robson (National Union of Students Scotland):** The heading "Consequences of the Bill's enactment" sounds rather grave, but that is one of the areas in which we were asked to make a representation, so we went with that. Training of staff is an issue that we take seriously. We see it as an opportunity for student unions to help students who are staff members to develop their skills as well as to give them employment.

Like many organisations, we were concerned about the lack of detail in the bill and wonder what its implications will be for student associations and many other organisations. As we said in our

submission, we do not see training as a burden: we see it as a developmental opportunity, but we would like to know whether we are on a level playing field.

We have supported the process throughout. We support the five licensing objectives and in many submissions to Parliament we state that we view students not only as students but as citizens. We support the proposals, but we have a different operating environment. The issue is not necessarily about pricing of alcohol, although it is linked to it. Some of our members would prefer a minimum pricing route, although I know that the Executive is not keen on that.

The suggestion is that there be a 48-hour rule. Unfortunately, we had our national conference in Blackpool last week, so I was unable to attend the meeting with some of the general managers who discussed the bill and fed back some of their concerns ahead of our giving evidence this afternoon. They came up with a suggestion. I do not deal with the matter on a day-to-day basis, so members will excuse me if I cannot work them through the suggestion properly. Those managers suggest the possibility of a seven-day rule rather than a 48-hour rule. Their view is that the larger pubs, clubs and nightclubs have the capacity to heavily discount their drinks for 48 hours during the week to target particular markets and can make up the money at the weekend, whereas student unions exist primarily to provide a range of other services—as Melanie Ward pointed out—and alcohol is only one part of the focus, so the bill's impacts will be different on student associations to what they will be for other clubs.

As Melanie Ward pointed out, we are keen that registered club status remain. I was told that that was in the Licensing (Scotland) Act 1976—I tried to search on the web for it, but could not find a copy. Some of our members would like legislation to refer specifically to student associations as being registered clubs, but we accept that that is not necessarily the way the Executive works.

We want some clarification on the premises licence. From our reading of the premises licence, if there were operational plan changes to staff, student officers or volunteer offices we would not have to go through the licensing board to have those changes approved. From my reading of the evidence that was given by the Scottish Executive a couple of weeks ago, it seems that it is correct to say that we could go ahead and make such changes without having to go to the licensing board, but we would obviously like clarification. We are keen to develop matters such as training, and to work with the Executive on guidance so that all our members know where they are and can be confident in helping to implement the legislation as best they can.

**Mr Davidson:** CISWO acknowledged in its evidence that clubs should be family friendly. For example, football clubs for young people often involve families. To an extent, the issue also applies to student associations. CISWO suggested that the law should be changed so that guests, if signed in appropriately, are entitled to purchase alcohol, which is not the case in clubs scattered throughout the country. Are there any measures in the bill that would disadvantage your members or which you would like to have clarified or changed?

**Ian McAlpine:** The Nicholson report recommended that children should be admitted to licensed premises unless they are excluded by the operating plan for the premises. However, it now appears that specific consent to admission of children will be required, which is fair enough, as long as consent is given when clubs wish it. As I said, many clubs are community facilities that are used by people from several age groups, but the existing restrictions make it particularly onerous for the dedicated teams of volunteers who manage the facilities to stay within the letter of the law. It is heartening to know that there will be a fresh look at the issue with the aim of allowing facilities to be more family friendly. The appropriate restrictions in relation to children and the sale of alcohol will then be down to the operating plan.

**Mr Davidson:** Is there a difficulty with one-off occasions, such as gala days, which will have to be put in the annual plan in advance? Should there be more flexibility on that?

**Ian McAlpine:** I am pleased that you raised that issue. The issue applies, for example, to a children's gala day in a mining community where the main community base is the local registered club, although such days are held throughout Scotland, not just in mining communities. It is appropriate for the bill to allow such occasions to take place as long as they are in the operating plan. The issue is about regulation to avoid abuse. In an ideal world, there would be no requirement to specify such occasions in the operating plan, but a case can be made for requiring specific occasions to be highlighted—that is better than putting a host of restrictions on premises, which might not allow them to hold genuine events.

**Melanie Ward:** Student associations often have end-of-term events and end-of-exams parties, but it can be difficult to know a year in advance exactly when they will happen. It would be helpful to build in a little flexibility for genuine events.

**Bruce Crawford:** On that specific point, if the operational licensing plan could include a request for, say, half a dozen ad hoc extensions to the licence a year, that would give a bit of flexibility.

**Ian McAlpine:** I hope that there will be a facility to do that in the operating plans. However, we do



not want to get dragged into a host of bureaucracy and different systems—that is what we are trying to get away from through a commonsense approach.

**Melanie Ward:** That suggestion would be suitable, but we would need flexibility with regard to dates, because it can be difficult to know the dates in advance.

**Michael McMahon:** Melanie Ward has given a comprehensive answer on the NUS's perspective on training, but I ask Mr McAlpine to discuss the implications of the requirement for training for staff who serve alcohol.

**Ian McAlpine:** CISWO believes that that requirement is a positive thing. We spend our lives encouraging best practice, and if a requirement for specific levels of training was tied in with the legislation we would support it. The question is about how to strike the appropriate balance. For example, the person who is ultimately responsible for a bar will require significantly more training than a casual part-time employee. As long as the balance is fair and reasonable, such training is to be encouraged.

**Michael McMahon:** What are the cost implications?

**Ian McAlpine:** Again, that is a question of striking the right balance. It is only fair and reasonable that the person who is responsible for a bar, with all that that entails, be properly trained. The answer comes down to the detail on the level of training, but we still do not have information on that. I support the general thrust of the proposal to put in place a requirement for training.

**Michael McMahon:** Does the NUS have a view?

**Keith Robson:** As the previous panel highlighted, the issue is about not just the cost but the practicalities. Some student associations employ permanent staff, some employ students and some have a mix of staff and students. Students might not be able to attend what might be considered a normal training session from 9 to 5, 9 to 1 or 1 to 5. We are looking for variability and flexibility of delivery in relation to times and methods—that might include one-to-one training. The issue is not just about cost, although cost is a consideration for any organisation.

As we pointed out earlier, we support training for a number of good reasons, but there are practical issues around its provision. The more detail we have, the more we will be willing to work with an expert group, the Executive or others to talk the matter through to ensure successful implementation.

**Michael McMahon:** In general, students nowadays tend to have part-time jobs for at least

some hours each week. If they work in a supermarket or a call centre, they are trained. Why should they not get training—

**Keith Robson:** We are not saying that students should not get training. The point is about ensuring that as many students as possible get training. That might depend on employers. The perspective of student associations might differ from that of large licensing consortia which, as we mentioned earlier, might use the three-month rule and decide that it is only worth employing a person for two and a half months. We would not defend the suggestion that students should not get training. There are many good developmental reasons why students should be trained. My point was about recognising the need for flexibility in training. If training is on a set number of Wednesdays over a couple of months in Glasgow city centre, students might be in class. They might work in a bar from Monday to Friday, on Tuesdays and Wednesdays or whatever, but they might have other commitments as well.

**Melanie Ward:** There is also an issue about who provides training. If a union's bar supervisors or managers can be trained and then train their staff themselves, there will be no problem because they will be able to fit in the training around their staff. If staff have to go away to attend a training course, that might cause problems. We are not saying that students should not be trained, but that in training them we must take those issues into account. We must also consider cost issues, but we have been working with various organisations to look for ways to overcome the cost barriers.

**Ian McAlpine:** I agree. I was going to make that point, but it has been covered.

**Dr Jackson:** Training is important. Did NUS Scotland mention in its submission to the Executive the point about the need for flexibility and different methods of training?

**Keith Robson:** Flexibility was not mentioned specifically in the submission, because we had only four pages into which to cram as much as possible. We thought to raise the matter today; we are willing to work with the Executive on any issues that arise. Members will see from our submission that we have a scheme called best bar none, which was originated by Greater Manchester police and for which there has been a pilot for the past year. The first annual awards were held at the NUS Services Ltd convention last month and a number of honours were given to student associations, including three or four from Scotland. We are looking to roll that out nationally—to use the jargon—as it promotes good practice. We are committed to training.

**Melanie Ward:** That is an important point. Especially in recent times, student associations

have taken a more professional and responsible approach to student drinking and provision of safe places in which students can socialise. Many other licensed premises do not have such responsibilities or do not take them seriously. We welcome the fact that the bill will encourage them to take those responsibilities seriously.

16:30

**Paul Martin:** Irresponsible drinks promotions are dealt with in schedule 3 to the bill. Arguably, the pricing policies of clubs and student associations encourage irresponsible drinking. It is well known that the price of alcohol in clubs and student associations is not only marginally cheaper, as has been claimed, but substantially cheaper than in other establishments. If the bill bans irresponsible promotions, will more students end up in the student association where drink will be at its cheapest?

**Ian McAlpine:** In my 20-odd years of experience with registered clubs, significant antisocial behaviour resulting from alcohol abuse has not been an issue. Registered clubs are in the main well controlled. Peer pressure from other members means that people who misbehave through excessive drinking are normally brought before a management committee and reprimanded. Such misbehaviour can lead to either suspension or loss of membership. Because of the careful management structure that private members clubs have in place, we do not get that kind of abuse.

**Paul Martin:** If the bill seeks to tackle antisocial behaviour by ensuring that the opportunity to offer irresponsible drinks promotions is withdrawn from all pubs and clubs, will those who are looking for cheaper alcohol end up in the students association and private clubs? I just pose the question.

**Ian McAlpine:** The reality is that a bar within a registered club does not exist for commercial benefit but is ancillary to the club's main activities. Such bars exist to generate a surplus that is used to maintain the club's facilities and to support its sporting, recreation, welfare or other activities.

**Paul Martin:** Does no one go to the rugby club for cheaper alcohol? Do they all go only because they support rugby?

**Ian McAlpine:** More often than not, people will join a rugby club because they like rugby and want to socialise with like-minded people.

**Paul Martin:** Do they all participate in, or are they all spectators of, rugby? Does everyone who joins the bowling club play bowls? I just want to pose the question whether people might not move from one alcohol provider to another that is a source of cheaper alcohol. Is that a possibility?

**Ian McAlpine:** It is rather inappropriate to lump in registered clubs with pubs and give them the same format for the sale of alcohol. The two are entirely different.

**Paul Martin:** Do people not abuse alcohol in clubs?

**Ian McAlpine:** Not as much. It is unusual for that to happen. When such abuse occurs, it is usually dealt with quite vigorously under the terms of the club's constitution.

**Melanie Ward:** In my view, student unions have traditionally provided alcohol as cheaply as possible to students for two main reasons. First, students do not have much money and cannot afford to pay the £4 or £5 for a glass of wine that is charged in some places. The need for a lower price is one element. The second reason is to keep students in student associations because, particularly in recent years, we have seen large pub companies going after the student market and taking it away from student associations. If student associations do not compete, they will have nobody in their bars and will be unable to make a surplus to support other activities.

We welcome coming down on irresponsible drinks promotions, particularly when they encourage young people and students—or, indeed, anybody—to drink a large amount of alcohol in a short time, but we do not wish to see new laws that unfairly penalise student associations in favour of big pub chains or nightclubs. For example, for a nightclub that opens only between 10 pm and 2 am, the 48-hour rule represents a short period of time. It is easy to target a student market in those two days. In most cases, student associations are open from 8 or 9 in the morning until 1 or 2 in the morning. A nightclub can afford to have a two-day promotion and can target the student market because it will make up the money at the weekend, whereas a student association cannot afford to do that. We support coming down on irresponsible drinks promotions and binge drinking, but we do not want student associations to be unfairly targeted. We want to ensure that there is a level playing field.

**Paul Martin:** My question for Melanie Ward is the one that I asked Ian McAlpine. People will be moved from one place where they abuse alcohol to another. Students will be able to say, "Here's an opportunity for cheaper alcohol. I will consume as many units as possible in the student union and then move on to a nightclub." All we will be doing is scrapping drinks promotions in one place and moving them to another. Is it not a fact that people go to student unions because the alcohol is cheaper, which provides an opportunity to consume more?

**Melanie Ward:** People go to their student union for many different reasons. Student unions vary hugely. Unions such as those at the University of Strathclyde or the University of Edinburgh, which are right in the heart of the city and compete with lots of pubs and clubs, and campus-based unions, such as those at Heriot-Watt University or the University of Stirling, serve different markets.

People drink and socialise in their student unions for many reasons. One is that they can get a reasonably priced drink, but another big reason is that student unions are safe places. They have properly trained bar staff and door staff, so if something happens to the student, they know that they will be looked after. Student unions are also safe because there is a record of who is in them. Members of the public cannot just walk in off the street. If something goes wrong, the people who cause the incident are dealt with and are not allowed back into the club.

People also go because student unions often run nights to raise money for charity or for their clubs and societies. That does not happen in the average nightclub. There are lots of reasons why students go to their unions, besides reasonably priced alcohol.

**The Convener:** I have a question on promotions that encourage irresponsible drinking. It is many years since I was inside a student union, but I recall certain activities that would be regarded as encouraging irresponsible drinking, such as yard-of-ale competitions. Do such things still occur in student unions? On the irresponsible promotion of new products, what guidance do student unions have on the discount that they offer on new drinks compared with the normal price of drinks of the same type? The level of discount might be a big factor in determining whether a promotion is irresponsible.

**Melanie Ward:** On the first point, two things have happened. First, for a number of reasons, student associations have what might be thought of as irresponsible promotions less frequently than they did in the past, partly because binge drinking is much more of an issue than it was a number of years ago—it is much more of a social issue and student associations tend to have a much more responsible attitude towards it. Secondly, promotions are found much more on the high street than was the case 10 years ago, because large pub chains have awakened to the student market and have promotions to draw students in. That is why we support coming down on irresponsible drinks promotions but believe in a fair approach that does not just target what happens in student associations. We want to stop irresponsible promotions altogether, while not unfairly penalising student associations in favour of big clubs and large pub chains.

**Keith Robson:** I am looking through evidence that we gave after the Nicholson committee report came out to make sure that I do not contradict anything that I have said in the past.

From talking to senior staff in the student associations, I think that they would still like to have the opportunity to promote new products. For example, NUS Services Ltd has a variety of purchasing deals. It might change from one line of soft drinks to another, or it might change from one lager product to another, so it would want the opportunity to introduce those new products to the students. There is a fine line between the promotion of a new product and having the prices so low that the situation falls under the irresponsible drinks promotion category defined in the bill.

It would be difficult to say, hand on heart, that there are never any examples up and down the country of irresponsible drinks promotions or activities such as drinking yards of ale. I can think of a couple that have made the press in the past couple of years. Those things go on from time to time, but we take a responsible attitude in encouraging students to think about the level of their drinking and about drinking safely and responsibly. We might have to do a bit more research and talk to our members if the committee wants a more comprehensive answer on where we believe the fine line should be drawn between highlighting a new product and an irresponsible drinks promotion.

**Melanie Ward:** There is a fairly obvious difference between a happy-hour promotion or a drink-all-you-can-for-£10 night and the union saying, "Here is a new product." It is not difficult to work out what is irresponsible and what is fair enough; common sense could be used.

**Keith Robson:** At the NUS Services Ltd convention last month, some of the student associations had a big debate about whether they should supply a new brand of water, because their students liked a different brand. There will be challenges for the associations in trying to sell that new brand, so, even with non-alcoholic drinks, the associations would want to have ways of introducing them.

**The Convener:** It has been suggested to me by someone from one of the student representative bodies that, although the majority of student unions are now adopting a more responsible approach to alcohol consumption and to awareness of health impacts, for example, one or two still take a different view and have more of a drinking culture. Is that a fair comment or are all student unions adopting a responsible approach?

**Melanie Ward:** That is probably a fair comment. However, it is clear that, within student

associations and the student community, there is almost self-regulation. If someone goes too far, other students will tell them that their behaviour is inappropriate. I am unlikely to see that happening on the high street, where anything goes and licence holders want to get as many people in and make as much money as they can. The situation is just not like that in student unions.

We now have an award scheme to reward student unions that are responsible and provide safe environments with well-trained staff—the best bar none scheme. We run frequent campaigns, such as asking people to watch how much they drink and telling them to take care of their drink when they are out and to make sure that no one slips anything into it. We have campaigns about how to get home safely at the end of the day and about being quiet when leaving the premises because of the neighbours. There are many welfare and health awareness campaigns that do not happen anywhere else. As a result, we feel that it is appropriate that we are recognised as being different from establishments on the high street in the context of registered club status.

**The Convener:** One of the issues that have still to be clarified is fees for premises licences. Do your organisations have any views on how those fees should be structured? Should they be related to capacity of venue, turnover or profit?

16:45

**Keith Robson:** We commented on that when we responded to the consultation last summer. I was flicking through the papers earlier, so I know that there is an answer; please bear with me. We were looking for a tiered approach, depending on the size and capacity of a premises, although we pointed out that size and capacity do not always equate to volume. We have concerns about what are termed hybrid premises. A lot of smaller student associations are used as cafe-bars that do not sell alcohol during the day, but become bars in the evening. The premises might be large during the day, with a much smaller capacity in the evening, serving people behind a small bar. I cannot find the page to which I was referring. I can leave the document with you, if that is helpful, rather than taking up more of your time.

**Bruce Crawford:** If there are to be registered clubs and you are to be different, why can the fee not be based on the number of members that you have, rather than being structured as for everybody else?

**Ian McAlpine:** Often, membership numbers bear no relation to the amount of alcohol consumed, just as the size of the premises does not necessarily bear any relation to the amount of alcohol consumed. A practical way forward would

relate to the size of the turnover of the facility. Some registered clubs are modest little places without many members and others are fairly sizeable. A practical way forward would be to link the fees with turnover. There is a concern that introducing a licensing standards office and more training for licensing board members will cost an awful lot of money. There is a genuine concern that the cost will be too onerous.

**Melanie Ward:** Most people accept that it would be unfair to charge non-profit-making organisations, such as the ones that we represent, the same fee as large high-street chains of pubs or nightclubs are charged. We do not make a profit; we make a surplus. If the fee was related to profits, that would suit us nicely.

The Executive mentioned mandatory charges for entering venues after midnight. We are concerned about that and are unsure about the rationale behind the move. Student associations are often not on campus; students will tend to drop in after they have been away playing a rugby game or watching a play. We do not think that it would make sense to charge them for entering their student association after a certain time.

**The Convener:** That brings us to the end of questions. Thank you.

## Prostitution Tolerance Zones (Scotland) Bill: Stage 1

16:48

**The Convener:** We have two more items, which I hope we can deal with fairly promptly. Item 2 is the timetable for future consideration of the Prostitution Tolerance Zones (Scotland) Bill. I invite members to agree that we ask the Parliamentary Bureau to extend the timetable for completion of stage 1 to 30 October 2005. The Executive is expecting to publish its response to the expert working group's report by the end of May before reporting to the Parliament. It seems to make sense for us to have sight of the Executive's response to the working group's report before we finalise our stage 1 report and before the Parliament debates the issue. Is it agreed that we ask for that extension?

**Members** *indicated agreement.*

## Ferry Services (Clyde and Hebrides)

16:49

**The Convener:** Finally, we come to the tendering of ferry services in the Clyde and Hebrides. I said that we would bring back to the committee further information about work that we might undertake. Some members have suggested that we take more evidence from academics, including David Edwards, who is a British representative at the European Court of Justice, and Dr Paul Bennett and Professor Neil Kay, who have recently submitted evidence to the Executive. I suggest that we also seek a position statement from the Minister for Transport to update us once he has concluded negotiations with the European Commission on the tendering of ferry services in the Clyde and the Hebrides.

**Fergus Ewing:** I support the proposals, but I thought that we had agreed that Jeanette Findlay from the University of Glasgow had also provided a solid piece of academic research. In fact, that was the subject of more of the debate and questioning in our session than the other papers were, especially with the unions. I assume that it might be acceptable to take evidence from her, too.

**The Convener:** I am content for us to seek to have Jeanette Findlay as a witness.

**Fergus Ewing:** Good. On the discussions that are taking place between the Executive and the European Commission, paragraph 5 of the note states:

"It is understood that it is unlikely that these discussions will be concluded before the summer recess."

Has the Executive given us that clear information?

**The Convener:** We received that information through consultation between the clerks and Executive officials. We could seek an interim update from the Executive for information for members, but the information that we were given is that the discussions are not likely to be concluded in the near future.

**Fergus Ewing:** I raise the issue because it was news to me that the Executive had given an indication in public that it does not envisage that the matter will be determined before the summer recess. I was not aware that that information was in the public domain. I want to clarify whether that is what the clerks have been told, because it is new information.

**The Convener:** There has not been a public statement on the issue, but that is the estimate of when the discussions will be concluded.

**Fergus Ewing:** There has been a public statement now.

**The Convener:** The point is that there is no specific deadline for the conclusion of the discussions with the European Commission. That is not a big issue, given that the matters under discussion are complex. The Executive is considering detailed submissions from academics and several of the issues require careful consideration by the Executive and the Commission. We have simply been given an estimate that it is likely that the discussions will continue for some time; no specific deadline has been given.

**Fergus Ewing:** So the statement that "it is unlikely that these discussions will be concluded before the summer recess"

is correct.

**The Convener:** That is our understanding.

**Fergus Ewing:** I have one final point. The paper recommends that we seek a position statement from the minister, which I welcome, but it also states that that should be

"following the conclusion of the current negotiations with the European Commission."

We need the position statement earlier than that. There is a clear distinction between negotiations and the legal framework. As several members said in the debate on 8 December 2004, the minister has stated that the law requires tendering, but, even now, he has produced no evidence to back up that assertion. In fact, I say with regret that a letter that I wrote to the minister early in January with several detailed questions has not been answered, which is miles over the deadline.

The Parliament has not been treated correctly, given that it voted against the minister on 8 December because it was not persuaded—I think that you abstained, convener. Members indicated dissatisfaction with the proposition that the law requires tendering. Can we request the position statement now? I want the minister not to set out his negotiations—about which there must be an element of confidentiality—but to state clearly the legal position and his authority for it. We have not had such a statement from the minister, which is just not good enough.

**The Convener:** It would be useful for us to have an interim position statement. As you rightly say, it might be inappropriate to publish at this stage some aspects of the Executive's negotiating position, because that might undermine it. It is fair enough for the Executive to say what it believes the legal position to be. As you well know, Governments do not often publish detailed legal advice that they receive from their legal officers. I do not want to get into a debate about that.

Individual members of Parliament can legitimately debate with the Executive whether that is the right approach, but it is the approach that Governments of different political parties have generally followed in the past. However, we should pursue an interim position statement from the Executive so that we understand the present situation.

**Bruce Crawford:** There is a difference, convener. Until the vote in the Parliament, the minister accepted the legal advice on the tendering process that he received from the European Commission. Fergus Ewing is asking for a statement from the minister about his understanding of the European Commission's legal position, which made the minister take the view that he had prior to the vote. That is slightly different from a situation in which the Government is in conflict with the Opposition. The issue is what the European Commission said and what regulation led the minister to the conclusion that he had no option but to proceed with tendering.

**The Convener:** The Executive receives legal advice not from the European Commission, but from its internal legal teams. The Executive will have discussed with the Commission aspects of European Union legislation, the Executive's understanding of it and whether the Commission believes that that understanding is correct. However, the legal advice comes from the Executive's officers, rather than from the Commission.

We will ask for an update. I am sure that, from reading the *Official Report* of the meeting, the minister will be aware of issues that members have raised and on which they wish clarification. I am not responsible for the content of the minister's update. Some members have expressed an interest in particular issues, but it is for the Executive to decide on the content of the interim update.

Do members agree to the course of action that is recommended in the paper?

**Members indicated agreement.**

**Fergus Ewing:** Will we take evidence from the academics and experts before the summer recess?

**The Convener:** Yes. However, Professor Kay is out of the country for a number of weeks, so it may be a few weeks until we can take all the evidence.

*Meeting closed at 16:57.*

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